IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 25TH JULY 2006 / 3RD SRAVANA 1928

TRC.No. 403 of 2002()

TA.177/1999 of S.T.A.T.ADDL.BENCH,ERNAKULAM
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REVISION PETITIONER/APPELLANT/REVENUE:

STATE OF KERALA REPRESENTED BY
THE DEPUTY COMMISSIONER (LAW),
COMMERCIAL TAXES, ERNAKULAM.

BY GOVERNMENT PLEADER SRI. GEORGEKUTTY MATHEW.

RESPONDEN/RESPONDENT/ASSESSEE:

SRI.K.R.STANLY, COPRA & H.P. DEALER,
PALLIPORT.

BY ADV. SRI.A.KUMAR

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 25/07/2006, ALONG WITH TRC. 462 OF 2002 & STRV. 374 OF 2004 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR & K.M.JOSEPH, JJ.

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furnishing the facts even at this stage. It is stated in the assessment that Assessing Officer has examined the product and he found shell cup with stand. However, before this court, respondent assessee's case is that coconut shell is cut into two pieces, one large one and the other small one, and the small piece is used as a lid for the bigger piece, which is called cup by the respondent assessee. In any case, the document produced also does not appear to be genuine one because it does not state anywhere the detailed processing involved, that is cutting of the shell and polishing it for making it fibre free and neat. However, the purchase order shows specific dimensions including total height with body length separately and the volume required for various types of cups ordered by the foreign party. The contention of the State is that what is purchased by the petitioner is coconut shell, and what is sold is coconut shell product, it falls under Entry 9 of the 1st schedule to the KGST Act. From the transactions as shown in the accounts, it is seen that petitioner is engaged in massive purchase of coconut and obviously coconut shells obtained out of the same are exported after making such shells as cups. Therefore the question is not only with

regard to tax liability under Section 5A of the Act on purchase of coconut shells but coconuts as such, the shells of which are also obviously used for export. Even though we are constrained to remand the case for the officer to re-examine the documents and accounts and to reconsider the issue, we are constrained to make some observations as guidelines for the officer to consider the assessee's claim.

4. Even though the Tribunal has relied on **Sterling Food's case** and the respondent has relied on the said decision referred to by the Tribunal and also the decision of the Supreme Court reported in **Deputy Commissioner, Sales Tax (Law) Board of Revenue (Taxes) Ernakulam v. Pio Food Packers** ((1980) 46 STC 63) as manufacturing, these decisions as such do not survive after the decision reported in **Asst.Commissioner (Intelligence) v. M/s. Nandanam Construction Company** ((1999) 7 KTR 651). We are of the view that the said decisions do not apply as such to the case in hand. This is because even after removal of inedible parts in the case of **Pio Food Packers's case** there is hardly any value difference or in other words the value addition is minimum. However, in this case, it is

seen that the respondent has got one dollor for each coconut shell cup, that is above Rs.40/- per cup, whereas purchase cost appears only 10% of it. Therefore there is apparently substantial value addition, which obviously means that the item purchased is not exported as such, but the same is substabantially processed or modified. It is common knowledge that coconut shell has fibre attached to it and unless mechanical process is adopted, it cannot be polished to completely remove the fibre and make it smooth for export. In fact Entry 9 of the 1st schedule of the K.G.S.T. Act provides for rate of tax on articles made of ivory, horn, rosewood, sandalwood, coconut shell and straw and makes it clear that the legislature treats coconut shell as a raw material and articles made of it as products. Therefore if any product is made out of coconut shell, then the same will not be entitled to exemption under Section 5(3) and purchase of coconut shells from unregistered dealers have to be assessed under Section 5A of the KGST Act.

5. Since clear cut findings of fact are not entered in the orders on the process involved, the purchase cost, the value addition etc., we

set aside the orders of the Tribunal and remand the same to the officer for re-examining the matter with reference to the observations above. The Assessing Officer will examine the product, if available, otherwise, go by the documents and accounts produced by the respondent and identify the raw material and the product exported and make fresh assessment for all the three years after giving an opportunity of hearing to the respondent assessee.

(C.N.RAMACHANDRAN NAIR, JUDGE)

(K.M. JOSEPH, JUDGE)

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C.N.RAMACHANDRAN NAIR & K.M.JOSEPH, JJ.

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